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OFFICE OF PETITIONS

In re Application of :
Saverio Carl Falco et al :
Application No. 09/931,457 : DECISION ON PETITION
Filed: August 16, 2001 :
Attorney Docket No. BB1116 US :
CIP :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed August 28, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 9, 2006, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 10, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b),¹ (2) the petition fee of \$1,500, and (3) a proper statement of unintentional delay. Accordingly, the reply to the non-final Office action of February 9, 2006 is accepted as being unintentionally delayed.²

¹ To facilitate processing, any petition for an extension of time (or petition to revive under 37 CFR 1.137(b)) in which a continuing application is filed in lieu of a reply should specifically refer to the filing of the continuing application and also should include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application.

² The letter accompanying the petition to revive improperly references this application as Application No. 09/932,457.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/501,425, filed August 9, 2006.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,020 extension of time fee submitted with the petition on August 28, 2006 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, appearing to read "Frances Hicks", is written over the printed name.

Frances Hicks
Petitions Examiner
Office of Petitions